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Supreme Court of the United States

Filed May 19, 1902.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ESTABLISSEMENT THERMAL DE VICHY,

Petitioners,

vs.

SARATOGA VICHY SPRING COMPANY.

677.

ANSWER BY DEFENDANT TO PETITION FOR WRIT OF CERTORIARI.

EDGAR T. BRACKETT,
WALTER P. BUTLER,
Defendant's Counsel.

TOWN HALL, Saratoga Springs, N. Y.

Supreme Court of the United States.

LA REPUBLIQUE FRANCAISE and LA COMPAGNIE FERMIERE DE L'ESTABLISSEMENT THERMAL DE VICHY, Petitioners, vs. SARATOGA VICHY COMPANY.	Answer to Petition for Writ of Certiorari.

The writ should not be granted where no question of gravity or importance arises.

Lau au Bew, Petitioner, 141 U. S. 583, 587, 589.

The bill was filed to enjoin the use by the defendant of the name "Vichy."

No question of public importance was involved, but merely a question of fact between the parties whether or not the defendant had infringed the complainant's alleged trade mark, or whether the facts proved presented a case of unfair competition. It must be apparent from the nature of the case that no question of sufficient importance can come up to warrant the granting of the writ.

The only points raised by the petitioners are that the court erred in so far as its decision proceeded on the ground that the complainants were guilty of laches, and that its decision was subsersive of the rights guaranteed to the petitioners by Article 8 of the Commercial Treaty of March 20, 1887.

The complainants' label is printed in black letters on white paper and wholly in the French language.

COMPLAINANTS' LABEL.

A MEDICINAL BEVERAGE.
BOTTLED WITH THE NATURAL GAS OF THE SPRING ONLY.

NATURAL

SARATOGA VICHY
WATER

A FINE TABLE WATER.

THE ONLY ALKALINE SPRING
AT
SARATOGA, N.Y.

The deposit in this water is a Natural Mineral precipitate and disappears on opening.

"The only water safe for the traveller to drink is a Natural Mineral Water."
SIR HENRY THOMPSON, F.R.C.S., London.

REV. B. K. PEIRCE, D. D., Boston:
"Most delicious of Saratoga waters, and far the best for indigestion and acidity of the stomach. Incomparably the best table water."

and the other in red and black letters on white paper, with a small neck label.

The Court held that the facts presented a case of unfair competition to the extent that on the small neck label the word Saratoga was not as prominently displayed as the word Vichy, and enjoined the use of the word Vichy unaccompanied by words indicating the origin of the water displayed equally as prominent.

So far as the decision proceeded on the ground of laches, the Court read the rule of law correctly.

So late as October, 1900, this Court in the Saxlehner case said to the complainant, "By "twenty years of inaction she has permitted the "use of the word by numerous importers and it "is now too late to reinstate her original title."

Saxlehner vs. Eisner & Mendleson Company, 179 U. S., 19, 36 and 37.

The delay in the present case was over twenty-five years.

As to the claim that laches cannot be imputed to the French government, it being a sovereign power.

The cases which hold the doctrine that laches cannot be imputed to a sovereign, reach only a government wherein the tribunal in which the suit is pending is located. It has never been ruled with respect to a foreign power suing in our courts.

The reason for the rule that laches cannot be imputed to the King, is, that as he is occupied with the cares of government he ought not to suffer from the negligence of his officers and servants.

Gibson vs. Chotteau, 13 Wall, 92, 99.

But it is manifest that this reason fails in the case of one government seeking redress in the jurisdiction of another. The business of a foreign sovereign with his cares of state is of no concern to our Courts, or our people. The foreign government can have no more standing than a foreign citizen, or corporation. The right to such plea is reserved to the home government alone and is not even permitted to one of its citizens. It would be a most extraordinary thing if we should grant to a foreigner, even if it be a state, a right which we deny to one of our own citizens, and it would be the more unjust in this case, where the foreign state is joined as complainant, not to protect any rights which it has, but only to aid, indirectly, one of its private corporations.

There is further answer to the proposition in the treaties between the government of France and the United States. Article II of the Industrial Property Treaty of 1883, provides that "The subjects ' or citizens of each of the contracting states shall ' enjoy, in all the other states of the union, so far ' as concerns patents for inventions, trade or com- ' mercial marks, and the commercial name, the ' advantages that the respective laws thereof at ' present accord, or shall afterwards accord, to ' subjects or citizens. In consequence they shall ' have the same protection as these latter, and the ' same legal recourse against all infringements of ' their rights, under reserve of complying with ' the formalities and conditions imposed upon sub- ' jects or citizens by the domestic legislation of ' each state."

The Court will take notice of this treaty.

1 Greenleaf on Ev., (15th Ed.) p. 7 note b.

The provisions of this treaty do not, in terms, include the foreign state itself, but strictly limit the rights granted to its "Subjects or Citizens," therefore, the state itself has no standing in court under the letter of the law. But if it should be held to come within the spirit of the treaty, then it comes into this court, as the treaty provides, with no other, or greater, rights than a subject, or citizen of this country, and cannot plead that laches cannot be imputed to it.

As to the claim that any question under the commercial treaty between this government and France is involved.

Article 8, of this treaty, referred to by the complainant, reads as follows: "The commercial "name shall be protected in all the countries of "the union without obligation of deposit, whether "it forms part or not of a trade or commercial "mark."

This article merely dispenses with the obligation of deposit, and does not in any way affect the Rule, that rights, however acquired, may be lost by laches.

A further and complete answer is that this Article was proclaimed by the President in 1887, after the defendant had acquired and been enjoying its rights for fourteen years.

Treaties are of no greater obligation than an Act of Congress.

Fong Yue Ting vs. United States, 149 U. S. 698, 720-1.

This treaty of 1883 is not retroactive, and does not effect the rights of individuals acquired prior to its ratification.

Haver vs. Yaker, 9 Wall, 32.

U. S. vs. Arrendondo, 6 Pet. 748.

Prevost vs. Greneaux, 19 How, 1.

The complainants, therefore, are not helped by this Article of the Treaty.

It is respectfully submitted that the law has been correctly applied to the case, that no treaty rights are involved and that no question of importance arises within the rule announced in Lau au Bew, Petitioner, 141 U. S., 583, 587-9, and that therefore, the writ should be denied.

If, however, the court decide to grant the writ the defendant asks the court to grant to the defendant the same right to review the decision of the United States Circuit Court of Appeals, as if the defendant had originally petitioned therefor.

Dated May 12, 1902.

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